

APPEAL NO. 022630  
FILED NOVEMBER 19, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 19, 2002. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to lifetime income benefits (LIBs) either based on an injury to the spine that resulted in the permanent and complete paralysis of both arms, or as a result of the combination of the \_\_\_\_\_, compensable injury along with the effects of the previous (previous date of injury), injury; and that since the claimant is not entitled to LIBs, there is no accrual date. The claimant appeals, arguing that she proved beyond a preponderance of the medical evidence that she has total inability to obtain and retain employment and that she met her burden of proving that she meets the requirements for LIBs as set forth by Section 408.161. The carrier responded, urging affirmance.

DECISION

Affirmed.

At issue is whether the claimant is entitled to LIBs. The hearing officer found the claimant was not entitled to LIBs. Section 408.161(a)(3) provides that LIBs are paid until the death of the employee for the loss of both hands at or above the wrist. Section 408.161(a)(5) provides that LIBs will be paid for an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg. Section 408.161(b) provides that the loss of use of a body part is the loss of that body part for purposes of subsection (a). In Texas Workers' Compensation Commission Appeal No. 94689, decided July 8, 1994, citing Travelers Ins. Co. v. Seabolt, 361 S.W.2d 204, 206 (Tex. 1962), we noted that the test for total loss of use is whether the member possesses any substantial utility as a member of the body or whether the condition of the injured member is such that it keeps the claimant from getting and keeping employment requiring the use of the member. In Texas Workers' Compensation Commission Appeal No. 952100, decided January 23, 1996, we noted that the Seabolt test is disjunctive and that a claimant need only satisfy one prong of the test in order to establish entitlement to LIBs.

The claimant acknowledged at the hearing that she was not paralyzed but maintained she lost use of her hands primarily because of constant pain. The hearing officer noted that the claimant's assertion that she was unable to use her hands and that she was in constant pain was neither persuasive nor credible, citing the surveillance video, medical records which recommended the claimant to the Texas Rehabilitation Commission, the results of a functional capacity evaluation, and the MRI results.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the

record and decided what facts were established. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
CINDY HARRIS  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge